

RFP "C" SERIES

C O N T R A C T

PRINTING, BINDING, PACKAGING, AND DELIVERING THE
2008 IOWA ACTS AND THE 2009 CODE

C-2 CONTRACT FORM

Combined Contracts
(1) Acts and (2) Code

Legislative Services Agency
Legal Services Division
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Des Moines, Iowa

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REQUEST FOR PROPOSALS (FORMS C-2)
CONTRACT FORMS 2008 IOWA ACTS & 2009 CODE

CONTRACT

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I. INTRODUCTION

- A. **Parties.** The parties to this contract are the Legislative Services Agency, herein referred to as the "Agency," an organization created under the jurisdiction of the Iowa General Assembly pursuant to Code of Iowa § 2A.1 and identified with the Federal Employer Identification Number 42-6022199, and West Publishing Corporation (Thomson West), herein referred to as "Contractor," a business located in Eagan, Minnesota, and identified with Federal Identification Number 41-1426973.
- B. **Two Publications (Acts and Code).** For the convenience of the parties, this form includes provisions governing production materials, standards of workmanship and schedules associated with the production and delivery of two publications: (1) The Iowa Acts, herein referred to as the "Acts," and (2) The Iowa Code, herein referred to as the "Code."
- C. **Contractor Agrees to Produce and Deliver One or Both Publications.** The Contractor agrees to produce and deliver the Acts and Code according to the provisions of this contract.

II. DEFINITIONS

As used in this contract, unless the context otherwise requires:

- A. **"Acts"** means the Acts and Joint Resolutions (Session Laws), a single-volume, loose spine, case bound book including statutory provisions as enacted or item vetoed during a regular session and any extraordinary session of that General Assembly, together with miscellaneous materials, tables, and an index, that is published each year under the direction of the Iowa Code Editor pursuant to Code of Iowa Chapter 2B.
- B. **"Book"** means any of the following:
1. **Acts.** The printed, finished, and bound edition of the 2008 Edition of the Acts.
 2. **Code.** Each volume of the printed, finished, and bound edition of the 2009 Iowa Code.
- C. **"Code"** means the 2009 Edition of the Code of Iowa published as a seven-volume, loose spine, case bound set of books including six volumes of statutes and miscellaneous materials (herein referred to as the "statutory volumes set") and a one-volume tables and index (herein referred to as the "index volume") that is published during each even-numbered year under the direction of the Iowa Code Editor pursuant to Code of Iowa Chapter 2B.
- D. **"Code Supplement"** means the Iowa Code Supplement, a single-volume, perfect bound, softcover book containing statutes and miscellaneous materials, including various tables and an index, that supplements the Code of Iowa, and is published during odd-numbered years under the direction of the Iowa Code Editor pursuant to Code of Iowa Chapter 2B.
- E. **"Contract Price"** means the total amount of money owed to the Contractor as described in Part IX, Paragraph "A," and as provided in Part IX, Paragraph "C."



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- F. **"Delivery"** means the physical or electronic transmission of communications, composed pages, a production item, or book by one party to another party as provided in Part V, or payment as provided in Part IX. Delivery is accomplished by receipt.
- G. **"Production"** includes all necessary and customary workmanship using production materials and relating to the design, composition, creation, manufacture, or reproduction of (1) production items, such as a sample cover, sets of digital proofs, or sets of assembled pages, or (2) books, including book pages, decoration of book covers, and the binding and the finishing of books.
- H. **"Production Item"** means a sample cover, set of digital proofs, or a set of assembled pages which are required to be produced by the Contractor for the Agency and delivered by the Contractor to the Agency as provided in this contract.
- I. **"Production Material"** includes but is not limited to any material such as paper, ink, covering, fabric and binding, stitching, glue, casing, boards, dies, or stamps which are necessary to produce a production item or book as provided in this contract.
- J. **"Publication"** means the Acts or the Code. Note, in odd-numbered years, "publication" means an edition of the Iowa Acts and Code Supplement.
- K. **"Sample Cover"** means a production item that is (1) a paper proof cover (sometimes referred to as a "laser proof") that illustrates how the books' covers will appear when the books are bound, which is produced and delivered during the trial performance period as provided in Part VI, Paragraph "A," or (2) a finished cover that is an exact replica of the books' covers which are produced and delivered during the standard performance period as provided in Part VII, Paragraph "A."
- L. **"Set of Assembled Pages"** means a production item that is a grouping of one set of digital proofs, or press proofs, sequentially arranged by page number, and that when collated will constitute a complete book which is produced and delivered during the standard performance period as provided in Part VII, Paragraph "C."
- M. **"Set of Digital Proofs"** means a production item that is a set of sheets of paper which replicate the Agency's composed pages and show how book pages will appear when published as part of the book (e.g., with crop marks), and includes (1) a set of digital proofs which are produced from various types of test composed pages selected by the Agency during the trial performance period as provided in Part VI, Paragraph "B," and (2) a set of digital proofs which are produced from sequentially collated composed pages (divided by signature or parts of signatures) during the standard performance period as provided in Part VII, Paragraph "B."
- N. **"Workmanship"** includes all aspects of labor and mechanical, chemical, or computer processes used to compose, create, or manufacture a production item or book using production materials. "Workmanship" includes but is not limited to the effort required to produce the appearance, sturdiness, and durability of a book; the quality of a production item or book, including but not limited to its binding, the appearance and placement of images on digital proofs and book pages, the placement of impressions and foils on a book's cover, and the alignment and cut of the book pages; the composition, color,



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legibility, crispness of text and artwork, and any necessary collating of digital proofs or assembled pages into sets.

III. GENERAL PROVISIONS

- A. *Appendices Incorporated by Reference.*** The Appendices (Form C-4) are incorporated as part of this contract by reference. If a provision in this contract and a provision in an Appendix conflict, the provision in this contract shall control. Otherwise, the provisions in the Appendices shall be reasonably construed as being in harmony with the provisions of this contract.
- B. *Two Contracts.*** This form contains two separate contracts: (1) a contract for the Acts, and (2) a contract for the Code. The form includes provisions applicable to both publications, unless otherwise expressly provided. If the same person is the Contractor producing and delivering both the Acts and the Code, the parties shall give the same interpretation to provisions that are common to both publications. A party's performance under one contract shall not affect the party's performance under the other contract except as provided in Part X, Paragraph E.
- C. *Choice of Law and Forum.*** This contract is governed by the laws of the State of Iowa. All disputes and controversies regarding this contract shall be heard in the District Court of Polk County, Iowa. However, if jurisdiction is not proper in the Polk County District Court, actions shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, provided that jurisdiction is proper in that forum.
- D. *Conflict with Contract and Applicable Law.*** In the case of a conflict between a provision of this contract and a statute or regulation of this state as judicially construed and in effect on the effective date of this contract, the provision of this contract controls, unless otherwise prohibited by a statute or regulation of this state as judicially construed and in effect on the effective date of this contract. Otherwise, a statute or regulation of this state as judicially construed and in effect on the effective date of this contract, and principles of common law as applicable on the effective date of this contract, shall be reasonably construed as being in harmony with the provisions of this contract.
- E. *Compliance With Applicable Laws and Regulations.*** During the duration of this contract and as a condition of the Contractor's duty to perform under the provisions of this contract, the Contractor shall comply with all applicable laws and regulations of the State of Iowa and the United States, including but not limited to Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991 (42 U.S.C. ch. 21), and the federal Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651—678).
- F. *Taxes; Certification — Collection and Remission of Iowa Sales and Iowa Use Tax.*** The Agency or the Iowa General Assembly is not responsible for paying any taxes incurred by the Contractor in the performance of this contract. The Agency and the Iowa General Assembly are exempt from the payment of Iowa sales taxes, Iowa use taxes, and other taxes. The Contractor shall not collect or remit an Iowa sales tax or Iowa use tax on sales of tangible personal property or services for its performance under this contract. However, the Contractor certifies to Iowa's Department of Revenue, on any



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form required by the department, that the Contractor agrees to collect and remit Iowa sales taxes and Iowa use taxes otherwise due under Code of Iowa Chapter 423 on the sales of tangible personal property and services as enumerated by statute, pursuant to Code of Iowa § 423.2 and § 423.5.

- G. *Estimations.*** Whenever this contract estimates a number of pages (or signatures) to be produced or estimates a number of books to be delivered to a particular location, the estimation is an approximation and subject to adjustment as provided in Part IX. The final numbers will be determined after the execution of this contract.
- H. *Counting Book Pages.*** When counting book pages, one sheet of paper includes two pages, one on the front side and one on the reverse side.
- I. *Computing Time.*** For purposes of computing time, including but not limited to purposes of calculating delivery requirements according to a schedule provided as part of a trial performance period as provided in Part VI or as part of a standard performance period as provided in Part VII or Part VIII, all of the following apply:
- 1. *Time of Day.*** Any reference in this contract to time of day is calculated using central time. A day begins at 8:00 a.m. and ends at 4:30 p.m.
 - 2. *Days.*** A "day" means a calendar day unless otherwise provided in this contract.
 - a. *Calendar Day.*** A calendar day is any day of the week. In computing calendar days for purposes of delivery, the first calendar day is excluded and the last calendar day is included unless the last day falls on a Sunday or a legal public holiday as defined in Code of Iowa § 1C.1, in which case the time prescribed is extended to include the next succeeding calendar day.
 - b. *Business Day.*** A business day is a calendar day other than a Saturday or Sunday or a day recognized as a legal holiday by the State of Iowa. See *Code of Iowa § 1C.1*. In computing time for purposes of delivery, the first business day is excluded and the last business day is included.
- J. *Agency's Interest in Production Items or Books.*** Production items or books shall not be subject to copyright by the Contractor in the United States or in any other country. The Contractor shall not use or release text or data originating from print or electronic media delivered to the Contractor and containing any portion of the production items or books without the prior written approval of the Agency. The Contractor shall not produce a print or electronic publication from such text or data without the prior written approval of the Agency. The Contractor shall not advertise itself as the official publisher of a book or any other publication produced by the Agency.
- K. *Party in Litigation.*** The Agency will not act as a party in any lawsuit to protect or enforce a right or interest of the Contractor, unless the Agency consents in writing to become a party.
- L. *Delegation.*** The Contractor shall not delegate (convey, assign, transfer, or subcontract) any interest in this contract to another person without the prior written consent of the Agency. The Contractor shall provide for subcontracting only as follows:



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1. **Authorized Persons.** The Contractor shall only subcontract with the following persons:
 - a. **Production (Book Bindery).** The Contractor may, with Agency approval, provide for the production of production items and books by a book bindery which acts under the direct supervision of the Contractor and provides for the production of (1) production items during the trial performance period as provided in Part VI, (2) production items during the standard performance period as provided in Part VII, or (3) books during the standard performance period as provided in Part VIII. See *Appendices A and B*.
 - b. **Delivery by Common Carrier.** The Contractor shall provide for the delivery of production items during the trial performance period as provided in Part VI and during the standard performance period as provided in Part VII, and books during the standard performance period as provided in Part VIII. The Contractor shall provide for the packaging of production items or books personally, by a book bindery as provided in Subdivision "a," or by a common carrier. The Contractor shall provide for the shipping of production items personally or by courier, and for the delivery of books personally or by freight company. See *Appendices C and D*.
2. **Payment Obligation.** The Contractor and not the Agency shall be liable for any payment to a subcontractor for performance rendered by the subcontractor under this contract.
3. **Duty to Perform.** The Contractor shall not be relieved from performing a duty under this contract because of a subcontract or a subcontractor's failure to perform a duty. All standards for production and delivery of production items and books as provided in this contract shall apply to the Contractor regardless of whether the Contractor renders performance directly or by using a subcontractor.
4. **Agreements.** The Agency may obtain and review any agreement executed between the Contractor and a subcontractor.
- M. **No Pecuniary Gain or Conflict of Interest.** The Contractor agrees that to its knowledge neither the staff of the Agency nor a member of the General Assembly of the State of Iowa has or will receive any direct economic benefit because of the selection of the Contractor as a party to this contract. The Contractor agrees that it has no interest and will not acquire any direct or indirect interest which would conflict in any manner with the performance of this contract, and that a person having such an interest will not knowingly be associated in the performance of this contract.
- N. **Fixed Price Contract.** This is a fixed price contract. Except as otherwise expressly provided in this contract, or expressly agreed to in writing by the parties, the contract price paid to a Contractor is fixed as provided in this contract. Except as provided in this contract, no special fees or expenses shall be charged directly or indirectly to the Agency, including labor, production materials, equipment, insurance, packing, freight, travel, parking, or any other costs incurred in producing and delivering production items or books.
- O. **Renewal.** The Agency reserves the right to execute a renewal contract with the Contractor who is a party to this contract to produce and deliver the next edition of the



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Acts in the following year or the Code in two years according to provisions substantially similar to the provisions of this contract, as negotiated by the parties.

IV. STANDARDS

PRODUCTION

- A. Contractor's Duty of Performance.** The Contractor shall acquire all production materials, furnish all workmanship, and oversee all aspects of production.
- B. General Standards.** Any detailed standard for production material or workmanship contained and required in this contract, including as specified in Paragraph "C," shall be the standard for production material or workmanship used to produce a production item or book. However, if a standard is not specified in this contract or there is a question regarding the Contractor's compliance with a standard for a production material or workmanship, regardless of detailed standards provided in this contract, including Paragraph "C", all of the following apply:
- 1. Production Materials.** If the Agency has approved without qualification a production material after the execution of this contract, including during the trial performance period as provided in Part VI or standard performance period as provided in Part VII, that same production material shall be used by the Contractor in the production of a production item during the standard performance period as provided in Part VII and in the production of books during the standard performance period as provided in Part VIII. The standard for a production material established pursuant to this Subparagraph 1 shall supersede any possible conflicting standard for the production material in this contract. In all other cases, the standard for a production material used to produce books shall be the same or equivalent to the standard used to produce the same books as follows:
 - a. Acts.** For the Acts, the 2007 Edition of the Iowa Acts.
 - b. Code.** For the Code, the 2005 Edition of the Code of Iowa. However, the page paper stock shall be comparable to the paper stock used in the production of the 2007 Edition of the Iowa Acts.
 - 2. Workmanship.** If the Agency has approved without qualification the workmanship used to produce a production item during the trial performance period as provided in Part VI or the standard performance period as provided in Part VII, that same workmanship shall be used by the Contractor in the production of production items during the standard performance period as provided in Part VII and in the production of books during the standard performance period as provided in Part VIII. The standard of workmanship used to produce a production item approved by the Agency without qualification shall supersede any possible conflicting standard for workmanship in this contract. In all other cases, the standard for workmanship used



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to produce books shall be the same or equivalent to the standard used to produce the same books for previous years as follows:

- a. **Acts.** For the Acts, the 2007 Edition of the Iowa Acts.
- b. **Code.** For the Code's statutory volumes sets, the statutory volumes sets for the 2005 Edition of the Code of Iowa, except for the index volume's mitered corners and blind stamping. The Agency shall provide the Contractor with samples of an index volume which provides a standard for mitered corners and blind stamping.
- C. **Detailed Standards — Appendices.** The detailed standards for production items and books are specified in Appendices A and B and shall control all of the following aspects of production, except if governed under general standards as provided in Paragraph "B," book size, paper stock, page composition and printing, and construction for production items and books.

V. STANDARDS

DELIVERY

- A. **Communications.** All communications by the Contractor to the Agency regarding any issue regarding this contract must be addressed to the Agency's contact persons, as specified in Appendix E. All communications by the Agency to the Contractor and the Contractor's response to the Agency regarding this contract will be addressed to the contact persons specified by the Contractor in Appendix E.
 1. **Book Bindery.** If the contact person specified in Appendix E is not responsible for the day-to-day operations in the book bindery, the Agency reserves the right to communicate with the person in the book bindery during the trial performance period as provided in Part VI, and during the standard performance periods as provided in Part VII or Part VIII.
 2. **Message and Response.** Agency and Contractor communications must be made in accordance with Appendix E.
 3. **Replacement.** If a party replaces a contact person, the party shall immediately notify the other party of the contact information for the new contact person.
- B. **General Duty to Deliver.** The parties shall deliver products as required in Appendices C and D.
- C. **Incomplete Delivery of Production Items and Pages.** The Agency's delivery of a set of composed pages with missing pages shall be deemed to be a failure to deliver the entire set of composed pages, and the Contractor's failure to deliver a complete, satisfactory set of digital proofs shall be deemed to be a failure to deliver both sets of digital proofs. However, the Agency may provide for incremental delivery of composed pages and for the incremental production and delivery of digital proofs. The Contractor's failure to deliver a complete, satisfactory set of digital proofs, or press proofs, for a book as part of a set of assembled pages shall be deemed to be a failure to deliver the entire



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set of assembled pages. The Contractor's failure to deliver a complete and satisfactory set of book pages for a book shall be deemed to be a failure to deliver the book. The Agency may treat the Contractor's failure to deliver three or more complete and satisfactory volumes as part of a single statutory volumes set as a failure to deliver the entire six statutory volumes to the Agency.

- D. **Subcontractor (Book Bindery).** The Agency may require that a subcontractor who is the book bindery deliver production items simultaneously to the Agency and the Contractor during the trial performance period as provided in Part VI and the standard performance period as provided in Part VII.
- E. **Common Carrier Requirements.** The Contractor shall provide for the delivery of production items and books in conformance with Appendices C and D as follows:
 - 1. **F.O.B.** The Contractor shall deliver a production item or book Free on Board (F.O.B.), Destination, Door, Freight Prepaid and Allowed as specified in Appendix C.
 - 2. **Specifications.** The Contractor shall package production items and books as specified in Appendix C and ship (including loading and unloading) production items and books as specified in Appendix C. However, the Agency may modify the special instructions specified in Appendix C or D prior to delivery.
- F. **Delivery on Business Day.** The Contractor shall not deliver a production item or book on a day other than a business day without the express approval of the Agency.
- G. **Excusable Failure to Deliver.** The Contractor is excused from delivering a production item or book on a specific business day or to a specific destination if the destination does not accept receipt and the Contractor promptly notifies the Agency of the refusal. However, the Contractor must complete delivery on the next business day to that destination, unless the failure is excused as provided in this Paragraph "G," or the Agency provides otherwise.
- H. **Possession by Agency.** Delivery is not accomplished until the Agency takes possession of a production item or book. Title does not pass to the Agency prior to the receipt of the production item or book by the Agency. The Agency's receipt of a production item or book is not an approval of the production item or book by the Agency. A production item or book which is damaged prior to receipt by the Agency shall be deemed undelivered. When the Agency opens a carton containing a damaged production item or book, it is conclusively presumed that the damage occurred prior to receipt (i.e., during production or delivery).
- I. **Review and Response.** The Agency shall review production items or books and communicate a response to the contractor as follows:
 - 1. **Exclusive Right of the Agency.** Even though another person may be authorized to receive a production item or book, only the Agency is authorized to approve, disapprove, or approve with qualification any number of production items or accept or reject any number of books.
 - 2. **Statistical Sampling.** In determining whether to accept or reject any book or all books delivered to the Agency as part of Normal Delivery or Special Delivery as



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provided in Part IX, Paragraph "C," the Agency is not required to examine more than a statistical sampling of at least five percent of all books delivered as part of Normal Delivery. For statutory volumes sets, the Agency shall examine all books that are part of the statutory volume set, but is not required to examine more than a statistical sampling of five percent of statutory volumes sets delivered as part of Normal Delivery.

3. **Determination Period.** The Agency shall have a determination period to deliver its response to the Contractor as provided in Appendix D. The Agency's determination period begins on the final date required for the delivery of the production item or book required to complete a publication after the actual date that such production item as publication is delivered, whichever is later.
4. **Agency Response.** The Agency's response shall be one of the following: (a) to approve a production item without qualification, approve a production item with qualification, or disapprove a production item during the trial performance period as provided in Part VI or the standard performance period as provided in Part VII or (b) to accept or reject a book during the standard performance period as provided in Part VIII.
5. **Remedies.** The Agency may seek remedies for the Contractor's failure to perform as provided in Parts X through XIII.

VI. SCHEDULE — TRIAL PERFORMANCE PERIOD PRODUCTION AND DELIVERY OF PRODUCTION ITEMS

Upon the execution of this contract, the Contractor shall produce and deliver the following production items for Agency approval during a trial performance period:

- A. **Paper Proof Covers.** In preparation for the Contractor's production and delivery of a finished cover during the standard performance period as provided in Part VII, Paragraph "A", and based upon written instructions prepared by the Agency, the Contractor shall produce and deliver paper proof covers for Agency review and response as follows:
 1. **Production.** A paper proof cover shall illustrate how the covers for the Acts and for each volume of the Code will appear when the books are bound, including all lettering and numbering, and the location of the required impressions and foil stamping. The paper proof cover shall meet the standards specified in Appendix B.
 2. **Delivery.** A paper proof cover shall be delivered to the Agency as specified in Appendix D.
 3. **Review and Response.** The Agency will review a paper proof cover and deliver its response to the Contractor (approval, qualified approval, or disapproval) as provided in Part V, Paragraph "I" and specified in Appendix D.
- B. **Sets of Digital Proofs.** In preparation for the Contractor's production and delivery of sets of digital proofs during the standard performance period as provided in Part VII, Paragraph "B," the Contractor shall produce and deliver the sets of digital proofs for Agency response as follows:



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1. **Production.** The Agency will deliver composed pages in an electronic format to the Contractor by using a system for the reliable transfer as specified in Appendix C. The Contractor shall use the composed pages to produce sets of digital proofs that meet the standards specified in Appendix B.
2. **Delivery.** The Contractor shall deliver the sets of digital proofs to the Agency as specified in Appendix D.
3. **Review and Response.** The Agency will review the sets of digital proofs and deliver its response to the Contractor (approval, qualified approval, or disapproval) as provided in Part V, Paragraph "I" and specified in Appendix D.

VII. SCHEDULE — STANDARD PERFORMANCE PERIOD PRODUCTION AND DELIVERY OF PRODUCTION ITEMS

Following the trial performance period (the Agency's final approval of a paper proof cover as provided in Part VI, Paragraph "A," and sets of digital proofs as provided in Part VI, Paragraph "B"), the Contractor shall produce the following production items and deliver them for Agency approval during a standard performance period:

- A. **Finished Covers.** Based on the paper proof cover approved by the Agency during the trial performance period as provided in Part VI, Paragraph "A," the Contractor shall produce and deliver finished covers for Agency response as follows:
 1. **Production.** A finished cover shall be an exact replica of the covers for the Acts and for each volume of the Code when the books are bound, including all lettering and numbering, and the location of the required impressions and foil stamping. The finished cover shall meet the standards specified in Appendix B.
 2. **Delivery.** The Contractor shall deliver a finished cover to the Agency as specified in Appendix D.
 3. **Review and Response.** The Agency will review a finished cover and deliver its response to the Contractor (approval, qualified approval, or disapproval) as provided in Part V, Paragraph "I" and specified in Appendix D.
- B. **Sets of Digital Proofs.** The Contractor shall produce and deliver sets of digital proofs for Agency review and response as follows:
 1. **Production.** The Agency will deliver composed pages in an electronic format to the Contractor by using the same system for the reliable transfer established during the trial performance period provided in Part VI, Paragraph "B," and as specified in Appendix C. The Contractor shall use the composed pages to produce sets of digital proofs that meet the standards specified in Appendix B.
 2. **Delivery.** The Contractor shall deliver the sets of digital proofs to the Agency as specified in Appendix D.



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- a. **Incremental Delivery of Composed Pages and Sets of Signatures.** The Agency may deliver the composed pages to the Contractor in installments by signature or by split signature. After the Contractor receives an installment of composed pages and produces the sets of digital proofs, the Contractor shall produce and deliver those sets of digital proofs to the Agency.
- b. **Deadline.** The Contractor shall deliver sets of digital proofs or an installment of a set of digital proofs to the Agency as specified in Appendix D. However, the Agency may waive this requirement and authorize the Contractor to deliver all sets of digital proofs produced from multiple installments of composed pages to the Agency on a later business day.
3. **Review and Response.** The Agency will review the sets of digital proofs and deliver its response to the Contractor (approval, qualified approval, or disapproval) as provided in Part V, Paragraph "I" and specified in Appendix D.
- C. **Sets of Assembled Pages.** Following the Agency's final approval of the sets of digital proofs as provided in Paragraph "B," the Contractor shall produce and deliver sets of assembled pages for Agency review and response as follows:
 1. **Production.** A set of assembled pages may be an assembled set of digital proofs, or a set of press proofs, for a book (the Acts or each volume of the Code), except that each set shall be three-hole punched to fit in a standard three-ring binder. For the Code, a set of assembled pages shall be collated according to volume for both the statutory volumes set and the later index volume. The sets of assembled pages shall meet the standards specified in Appendix B.
 2. **Delivery.** The Contractor shall deliver the sets of assembled pages to the Agency as specified in Appendix D.
 3. **Review and Response.** The Agency will review the sets of assembled pages and deliver its response to the Contractor (approval or disapproval) as provided in Part V, Paragraph "I" and specified in Appendix D.

VIII. SCHEDULE — STANDARD PERFORMANCE PERIOD PRODUCTION AND DELIVERY OF BOOKS

Following the standard performance period (the Agency's final approval of a finished cover as provided in Part VII, Paragraph "A," and sets of digital proofs and assembled pages as provided in Part VII, Paragraph "B") the Contractor shall produce books and deliver them to the Agency for approval during a standard performance period in compliance with the requirements of this contract, including the standards provided in Part IV, this part, and the Appendices.

- A. **Packaging and Shipping Books.** The packaging (including loading) and shipping (including unloading) of the books shall meet the requirements specified in Appendix C.



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- B. *Delivery Requirements.*** The Contractor shall provide for both Normal Delivery and Special Delivery of the books to all destinations specified in Appendices C and D.
- C. *Review and Response.*** The Agency will review the books and deliver its response to the Contractor (acceptance or rejection) as provided in Part V, Paragraph "I" and specified in Appendix D.

IX. SCHEDULE — PAYMENT

- A. *General.*** The Agency is liable to the Contractor as provided in this contract only for amounts paid as consideration under this contract, and subject to the following:
- 1. *Contract Price.*** Unless this contract is terminated as provided in Part XI, payment of the contract price shall be based on the production and the delivery of production items and books to the Agency according to the terms and conditions of this contract, including the approval of production items during the trial performance period as provided in Part VI, the approval of production items during the standard performance period as provided in Part VII, Paragraphs "A" through "C," and the acceptance of books during the standard performance period as provided in Part VIII, Paragraph "C," and specified in Appendices C and D.
 - 2. *Invoice Required.*** The Contractor shall present an invoice or invoices to the Agency for payment of the contract price as specified in Appendix D. The Contractor shall present a separate invoice to the Agency for the Acts and the Code pursuant to the payment schedule provided in Paragraph "B." The Agency's payment to the Contractor of the amount stated in an invoice shall be deemed conclusive evidence of satisfaction by the Agency of any payment obligation for the items invoiced, and each party waives any right to later contest the invoice amount based on error. If payments are made in installments, the Contractor shall identify the final invoice and specify the amount of the last payment owed by the Agency. The Agency's payment of the final invoice shall be deemed conclusive evidence of payment of the contract price owed to the Contractor, regardless of any error by the parties.
- B. *Payment Schedule.*** Upon delivery of an invoice as provided in Paragraph "A," Subparagraph 2, the Agency shall pay the Contractor the contract price.
- 1. *Conventional Payment Schedule.*** Except as otherwise provided in Subparagraph 2, the Agency will pay the Contractor according to a conventional payment schedule. The Agency may make one payment to the Contractor at the end of the determination period as provided in Part V, Paragraph "I," and specified in Appendix D. The Agency shall pay the Contractor 100 percent of the amount of the contract price for all books accepted under the contract as provided in Paragraph "C."
 - a. *Acts.*** For the Acts, the Agency shall make payment after the determination period for the Acts.



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- b. **Code.** For the Code, the Agency shall make payment after the determination period for the index volume.
2. **Early Payment Schedule.** The Agency, upon request by the Contractor or upon its own initiative, may pay the Contractor the contract price or a portion of the contract price earlier than required under Subparagraph 1. In order to receive payment of an amount earlier than required under Subparagraph 1, the Contractor must verify that the Contractor has incurred all production costs associated with performance under this contract. The decision of the Agency to pay an amount earlier than required under Subparagraph 1 shall not be construed as an amendment of this contract, shall not obligate the Agency to pay the Contractor an amount other than as provided in this contract, shall not constitute a waiver of any requirement of the Contractor, and shall not relieve the Contractor of its duty of performance under this contract.
- C. **Amount of the Contract Price (Base Price and Adjustments).** The Agency shall pay the Contractor a base price which is an estimate of the contract price. See *Appendix A*. The base price shall be calculated as follows:
1. a. **Acts.** For the Acts, the Agency shall pay \$36,770 for the production and delivery of an order of 3,250 publications by assuming that each book has an estimated 1,600 pages divided into 50 signatures, subject to adjustment as provided in Subparagraph 2.
 - b. **Code.** For the Code, the Agency shall pay \$426,588 for the production and delivery of an order of 5,750 publications sets by assuming that each Code has an estimated 9,344 pages divided into 292 signatures, subject to adjustment as provided in Subparagraph 2. However, the Code shall not include more than 224 pink book pages divided into 7 signatures (one signature for each volume).
2. **Adjustment.** The Agency shall adjust the base price as provided in Paragraph 1 to achieve the contract price as follows:
- a. (1) **Replacement Pages.** The Agency shall adjust the base price to account for the replacement of an occasional page or pages of a book as required by the Agency due to the Agency's correction of the appearance or text of a page during book production. The Agency shall delivery a replacement page to the Contractor by electronic transmission. The Contractor shall not charge the Agency for the first \$300 incurred for replacing any pages of a publication.

Table A.1
Adjustments Based on Replacing Pages

Publication	Amount Per Hour
Acts	\$75 After the First \$300.00
Code	\$75 After the First \$300.00



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- (2) **Customary Charges.** The prices charged by the Contractor for incidental work shall not exceed those customarily charged by the Contractor to its customers for similar incidental work. The Contractor shall provide the Agency with proof of customary charges.
- b. **Actual Number of Publications (Overrun).** The Agency shall adjust the base price to account for any number of up to 100 additional publications of an overrun which the Contractor produces and delivers to the Agency during the standard performance period as provided in Part VIII. The Agency shall not adjust the base price to account for the overrun of one or more volumes of the Code that is not part of a complete seven-volume set.
- c. **Actual Number of Signatures (Adjusted).** The Agency shall adjust the base price to account for the actual number of signatures of regular cream-white page paper (but not the specified pink page paper) for each publication as adjusted during a production period (the number of signatures that the Agency instructs the Contractor to be added to or subtracted from the estimated signature count). The Agency shall adjust the estimated amount to pay for the actual number of signatures of each publication of the overrun (x number of signatures of regular cream-white page paper and one full signature of pink page paper) as provided in Subdivision "b."

Table A.2
Contract Price (Bid Amount Estimated and Adjusted Signature Count as Part of an Order and Overrun)

		Signature Calculation	Signatures Per Publication (Full 32-Page or Half 16-Page Signature Form)	Amount Per Signature (Full 32-Page or Half 16-Page Signature Form)	
				Order See Appendix A	Overrun (Each Additional Publication)
Publication	Acts	Estimated For Bid Amount	50 Per Book	<u>\$1,029.12</u> Bid Amount Divided by 50	<u>\$.25</u>
		Adjusted	Each Additional Full	<u>\$1,029.12</u>	<u>\$.25</u>
			Each Additional Half	<u>\$514.56</u>	<u>\$.13</u>
			Each Fewer Full	<u>\$1,029.12</u>	<u>\$.25</u>
			Each Fewer Half	<u>\$514.56</u>	<u>\$.13</u>
	Code	Estimated For Bid Amount	292 Per Code Set	<u>\$1,507.02</u> Bid Amount Divided by 292	<u>\$1.58</u>
		Adjusted	Each Additional Full	<u>\$1,507.02</u>	<u>\$1.58</u>
			Each Additional Half	<u>\$753.51</u>	<u>\$.79</u>
			Each Fewer Full	<u>\$1,507.02</u>	<u>\$1.58</u>
			Each Fewer Half	<u>\$753.51</u>	<u>\$.79</u>



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X. PROCEDURES AND REMEDIES FOR NONCOMPLIANCE — GENERAL

- A. *All Legal Remedies Available.*** Remedies available as provided in this contract for breach of contract are in addition to every other remedy available to the parties at law or in equity. The Agency may utilize a procedure and remedy for noncompliance as provided in this contract in addition to another procedure and remedy also provided in this contract, including but not limited to termination as provided in Part XI, a demand for specific performance as provided in Part XII, or the assessment of liquidated damages as provided in Part XIII.
- B. *Notice and Response Requirements.*** The Agency shall notify the Contractor in writing of any noncompliance with the terms and conditions of this contract that demands a remedy as provided in Paragraph "A". Except as provided in Part XI, the Agency shall deliver the notice of noncompliance within the determination period for the approval of books as provided in Part V, Paragraph "I," and specified in Appendix D. The notice demanding a remedy for a breach of contract as provided in Part XII or XIII shall document each breach of contract and the remedy demanded or imposed for the breach of contract. A notice of breach of contract which demands a remedy shall suspend any obligation by the Agency to carry out the provisions of this contract until the Agency accepts the remedy. The Contractor may dispute the Agency's determination of a breach by delivering a notice of dispute to the Agency within 30 calendar days after the Agency delivers its notice to the Contractor. The dispute shall be resolved by the parties in good faith.
- C. *Indemnification.*** Except as provided in this contract, the Contractor shall jointly and severally indemnify and hold the Agency, the Iowa General Assembly, and the State of Iowa harmless from and against all liability, loss, damage, or expense, including reasonable attorney fees, by reason of a breach of contract by the Contractor.
- D. *Performance Bond.*** The Contractor shall post a performance bond with the Agency as follows:
- 1. *Amount.*** The performance bond shall be 75 percent of the base price as provided in Part IX, Paragraph "C" as follows:
 - a. *Acts.*** For the Acts, \$27,577.50.
 - b. *Code.*** For the Code, \$319,941.00.
 - 2. *Substitution.*** The Agency may accept a certified check, cashier's check, or money order in lieu of a bond, which must be kept on file with the Agency, until the satisfaction of the contract.
 - 3. *Retention.*** The Agency may retain the performance bond until the end of the determination period for the acceptance of books as provided in Part V, Paragraph "I," unless the Contractor disputes the Agency's determination as provided in Paragraph "B." In that case, the Agency may retain the performance bond until the dispute has been resolved.



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- E. Termination of Both Contracts.** A party's performance under one contract shall not affect the party's performance under the other contract, unless a party terminates the contract for the Acts under Part XI. In that case, the party may also terminate the contract for the Code. However, the party terminating the contracts must notify the other party of the terminations at the same time as provided in Paragraph "B."

XI. PROCEDURES AND REMEDIES FOR NONCOMPLIANCE — TERMINATION

- A. Justifiable Termination.** Any of the following shall be just cause for terminating this contract, without breach of contract:

- 1. Insufficient Moneys.** If moneys necessary to satisfy this contract price are at any time not forthcoming or insufficient through the failure of the State of Iowa to make sufficient moneys available as a result of legally binding action, then the Agency may terminate this contract by giving not less than 20 calendar days' written notice to the Contractor documenting the lack of funding. Upon termination, the Agency agrees to pay all costs incurred by the Contractor up and until the date of termination. If moneys necessary to satisfy the contract price become available within 40 calendar days subsequent to the termination, the Agency agrees to reexecute a contract with the Contractor under the same provisions of this contract and any amendments as agreed to by the parties.
- 2. Force Majeure.** If the performance of any provision of this contract is prevented by an event which is an act of God, civil tumult, war, epidemic, interruption of transportation or communication, or any other cause beyond the control of a party, as determined by the Agency, that party is relieved of the performance of that provision of this contract. However, if the Contractor is prevented from performance, the Contractor shall provide the Agency with written notice within 10 calendar days describing the preventing event, the possible duration of the preventing event, the Contractor's efforts to remedy the situation caused by the preventing event, and the expected effect of the preventing event upon the schedules contained in this contract. It shall be the Contractor's responsibility to show that the cause of the preventing event was beyond the Contractor's control, that the preventing event reasonably caused nonperformance, and that the Contractor was not reasonably able to anticipate the preventing event in order to avoid the nonperformance.

- B. Nonjustifiable Termination.** Either party may terminate this contract if the other party breaches this contract by failing to substantially comply with a provision of this contract. The party terminating this contract shall deliver written notice to the other party within 20 calendar days following the breach. The written notice shall document the breach of contract. If the Contractor breaches this contract by failing to satisfy such provision, the Contractor shall forfeit all or part of the performance bond provided in Part X, Paragraph "D", and the Agency may withhold all or a portion of unexpended moneys of the contract price, retaining such moneys as liquidated damages. The Agency may also continue this



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contract and retain such moneys as liquidated damages. The Agency shall deliver a written notice to the Contractor stating the Agency's decision to retain an amount in liquidated damages not later than 20 calendar days following the delivery of its notice documenting the breach of contract.

- C. Unilateral Termination.** The Agency may unilaterally terminate this contract if the Contractor commits an egregious breach of this contract as specified in this Paragraph "C". The Agency shall deliver a written notice to the Contractor within 30 calendar days following the Agency's discovery of the egregious breach, but within the determination period for the acceptance or rejection of books as provided in Part V, Paragraph "I," and specified in Appendix D. The written notice shall document each cause of the egregious breach.
- 1. Egregious Breach.** As used in this Paragraph "C," an egregious breach is limited to any of the following:
 - a. Unauthorized Copyright.** The Contractor obtains or attempts to obtain a copyright in text or data produced in a book or originating from electronic media delivered to the Contractor by the Agency as provided in this contract.
 - b. Unauthorized Release.** The Contractor releases text or data delivered by the Agency to the Contractor under this contract to any person, including but not limited to a related entity of the Contractor, the text or data is produced in a book or originates from electronic media delivered to the Contractor by the Agency, and the release is not expressly approved in writing by the Agency.
 - c. Unauthorized Publishing.** The Contractor uses text or data delivered by the Agency to the Contractor under this contract for purposes of publishing without the express written approval of the Agency.
 - d. Unwarranted Delay.** The Contractor fails to deliver any of the following:
 - (1) Production Item.** A production item as required to be delivered to the Agency during the trial performance period as provided in Part VI or the standard performance period as provided in Part VII more than 10 calendar days after due.
 - (2) Book.** A book required to be delivered to the Agency during the standard performance period as provided in Part VIII more than 20 calendar days after due.
 - e. Rejected Production Item (Grossly Unsatisfactory).** The Contractor delivers a production item during the trial performance period as provided in Part VI or the standard performance period as provided in Part VII which the Agency rejects because it determines that the production item is grossly unsatisfactory. A set of digital proofs or set of assembled pages is deemed grossly unsatisfactory if text is corrupted or does not otherwise match the composed pages delivered by the Agency to the Contractor for production of the set of digital proofs. This Subdivision "e" does not apply to a production item that is unsatisfactory due to the Agency's use of technology or procedures to produce or transmit information to the Contractor for the production of the production item.



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- f. **Rejected Books (15 Percent Rejection Rate).** The Contractor delivers 15 percent or more of an order of the publications, not counting an overrun as provided in Part X, Paragraph "C," which the Agency rejects because the publications are unsatisfactory. A publication is unsatisfactory if the Agency determines that its books do not comply with the standards for materials or workmanship provided in Part IV based on a statistical sampling of delivered books conducted by the Agency during the determination period as provided in Part V, Paragraph "I," as specified in Appendix D. The Agency shall notify the Contractor of the rejection as soon as practicable within the determination period.
- (1) **Acts.** For the Acts, the Agency may determine that 15 percent or more of the books are unsatisfactory.
- (2) **Code.** For the Code, all of the following apply:
- (a) **Statutory Volumes Sets.** The Agency may determine that 15 percent or more of the books which are part of the same volume are unsatisfactory or the Agency may determine that 15 percent or more of all statutory volumes sets are unsatisfactory because one or more of the books in each of the statutory volumes sets are unsatisfactory.
- (b) **Index Volumes.** The Agency may determine that 15 percent or more of the index volumes are unsatisfactory.
- g. **Failure to Comply With a Notice for Specific Performance.** The Contractor fails to comply with a demand for specific performance within the period for compliance as provided in Part XII, Paragraph "B."
2. **Remedies.** The Contractor shall forfeit the performance bond as provided for in Part X, Paragraph "D," the Agency may withhold all or a portion of unexpended moneys of the contract price, retaining such moneys as liquidated damages, and the Agency shall be entitled to 75 percent of the base price as provided in Part IX, Paragraph "C" in additional liquidated damages based on potential lost sales to the Agency, the Agency's diminished reputation, and delays caused by selecting another vendor to complete the production and delivery of the publication.

XII. PROCEDURES AND REMEDIES FOR NONCOMPLIANCE — SPECIFIC PERFORMANCE

- A. **Cause.** The Agency may demand specific performance for cause as follows:
1. **Disapproval or Rejection.** The Contractor delivers a production item which the Agency disapproves during the trial performance period as provided in Part VI or during the standard performance period as provided in Part VII or the Contractor delivers a book or a statutory volumes set which the Agency rejects during the standard performance period as provided in Part VII or Part VIII. The Agency shall



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disapprove a production item or reject a book which does not comply with the standards for production materials and workmanship provided in Part IV, including as specified in Appendices A and B.

2. **Inadequate Delivery.** The Contractor fails to comply with a requirement for the delivery of a production item during the trial performance period as provided in Part VI or during the standard performance period as provided in Part VII or the Contractor fails to comply with a requirement for the delivery of a book during the standard performance period as provided in Part VIII, including as specified in Appendices C and D.
 3. **Underrun.** The Contractor produces an underrun of a set of digital proofs, a set of assembled pages, or a publication. The Agency may require the Contractor to produce the number of sets of digital proofs or sets of assembled pages as required by Part VII, Paragraph "B" or "C," or the number of publications as required by Part IX, Paragraph "C," for delivery to the Agency. If the Contractor produces an underrun of Codes, including a statutory volumes set or index volume, the Agency may require the Contractor to produce the missing volumes in order to complete the Code set.
 4. **Unauthorized Copyright.** The Contractor obtains or attempts to obtain a copyright in text or data. The Contractor shall immediately withdraw any application for the copyright and renounce any such copyright that the Contractor has obtained.
 5. **Unauthorized Release.** The Contractor releases text or data to an unauthorized person. The Contractor shall take all actions necessary to recover the text or data from that person. The Contractor shall return the text or data to the Agency or destroy the text or data in a manner specified by the Agency.
 6. **Unauthorized Publishing.** The Contractor uses text or data for purposes of unauthorized publishing of information delivered to the Contractor by the Agency. The Contractor shall destroy any publication which uses such information upon demand by the Agency.
- B. Compliance Period.** Unless the Contractor disputes the Agency's demand for specific performance as provided in Part X, Paragraph "B," the Contractor shall provide specific performance as demanded in the Agency's notice within the same period of time required for the original delivery. However, if the Agency's demand is for the production and delivery of a book to correct and replace a book that the Agency rejected, the Contractor shall deliver the corrected replacement book to the Agency as provided in Paragraph "C" within 20 calendar days following the delivery of the Agency's notice to the Contractor.
- C. Replacement.** If the Agency disapproves a production item, rejects a book, or does not receive a production item or book, as provided in Paragraph "A," the Contractor shall replace the production item or book as required by the Agency.
1. **Production Items.** If the Agency disapproves an entire set of digital proofs, the Contractor shall deliver two sets of corrected replacement sets of digital proofs or any part of the corrected replacement sets of digital proofs to the Agency in the manner specified by the Agency. If the Agency disapproves a set of assembled pages, the



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Agency shall return one set of assembled pages or a representative percentage of pages only upon request by the Contractor and at the Contractor's expense.

2. **Books.** If the Agency rejects a book, the Agency shall return the book or a representative percentage of books or book pages that are in its custody to the Contractor only upon request by the Contractor and at the Contractor's expense. In the case of a book required to be delivered to an Agency's customer, the Contractor shall deliver the replacement book to the customer or deliver the book to the Agency and reimburse the Agency for its costs to directly deliver the corrected book to its customer. The Agency may deduct the amount of the reimbursement from the contract price. In the case of the Code, if three or more volumes of a statutory volumes set are rejected or are missing, the Agency may require the Contractor to replace the entire statutory volumes set in the same manner as a replacement book.

XIII. PROCEDURES AND REMEDIES FOR NONCOMPLIANCE — LIQUIDATED DAMAGES

A. ***Liquidated Damages for the Late Delivery of Books.*** The Agency may impose liquidated damages on the Contractor for the Contractor's late delivery of books during the standard performance period, including as part of Normal Delivery or Special Delivery as provided in Part VIII, Paragraph "B."

1. **Assumptions.** The Contractor's late delivery of books will cause the Agency damages, including a loss in future sales of the Acts or Code and an accompanying loss of goodwill and diminished reputation which will affect the sales of other Agency publications, including future sales of the Acts and the Code, based on the following assumptions:
 - a. **Normal Delivery.** The late Normal Delivery of the books will reduce the effectiveness and efficiency of all of the following:
 - (1) **General Distribution.** For General Distribution, members of the public and Iowa's legal community who depend upon the books to research legal provisions and provide legal advice to clients.
 - (2) **Capitol Complex Distribution.** For State Capitol Complex Distribution, officials and employees of the Capitol Complex who depend upon the books to carry out executive or judicial branch functions.
 - (3) **Legislative Distribution.** For Legislative Distribution, members of the Iowa General Assembly, Agency staff, and other legislative employees who rely upon the books to carry out legislative branch functions.
 - b. **Special Delivery.** The late Special Delivery of books will reduce the effectiveness and efficiency of judges and judicial branch employees who depend upon the books to carry out judicial branch functions throughout the state.



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2. a. **Calculation.** For each calendar day delay in the delivery of an item the Agency shall assess liquidated damages which shall be imposed upon the Contractor based on the following formula:

Formula

Liquidated Damages for the Late Delivery of Publications/ Cap for Statutory Volumes Sets (Sets)

One Publication (Book or Set) That Is Delivered One Calendar Day Late
x Assessment Rate (Base Rate or a Multiple of the Base Rate)
= Base Amount of Liquidated Damages

Base Amount of Liquidated Damages
x Number of Calendar Days Late
= Per Publication (Book or Set) Total
(For One Book or One Set Delivered One or More Calendar Days Late)

Per Publication (Book or Set) Total
x Number of Publications (Books or Sets) That Are Delivered Late
= Total Amount of Liquidated Damages
(For All Books or Sets That Are Delivered One or More Calendar Days Late)

- b. **Assessment Rate.** The assessment rate is weighted according to (1) type of publication required to be produced and delivered and (2) the type of delivery and distribution of that publication.
- (1) **Type of Publication.** It is assumed that while the Acts and the Code are critical and complementary parts of Iowa law, the Acts is more valuable than a single Code volume, and that a complete Code set containing the edited provisions of permanent statutory law is more valuable than the Acts. Thus, the late delivery of Acts is assessed at a base rate of \$.10 per book compared with the late delivery of a Code volume assessed at a base rate of \$.05 per volume multiplied by seven volumes (.05 x 7 = \$.35). However, because the six statutory volumes are produced and delivered together, the base rate assessed for the late delivery of a statutory volumes set is capped at \$.15 which is one-half of the amount of the base rate assessed on a per-book basis (in effect treating the late delivery of the entire statutory volumes set as the late delivery of only three of the six volumes).
- (2) **Delivery and Distribution.** It is assumed that for most purposes the late delivery of publications will be assessed at the base rate for Normal Delivery with General Distribution for each type of the publication, \$.10 for the Acts, and \$.05 for a single volume of the Code capped at \$.15 for a statutory volumes set. Secondly, it is assumed that certain persons associated with the executive, legislative, and judicial branches of governmental must timely receive the publications in order to carry out critical public functions. Thus, the base rate is multiplied by a factor for the late delivery and distribution to



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certain priority destinations, including Normal Delivery with Legislative Distribution for statutory volumes sets (assessed at a multiple of 20 times the base rate) or State Capitol Complex Distribution (assessed at a multiple of two times the base rate) and Special Delivery for judicial distribution (assessed at a multiple of two times the base rate).

Table B
Liquidated Damages for the Late Delivery of Books
Capped for Statutory Volumes Sets

Type		Calculation Formula					
Delivery	Distribution	Publication		Assessment Rate x One Book or Set = Base Amount	No. of Days Book or Set Delivered Late	Per Book or Per Set Total	
Normal (Des Moines)	General	Acts		\$.10	Base Rates x _____	=	\$ _____
		Code	Book	\$.05			
			Set	\$.15			
	Legislative	Acts		N/A	Multiple of Base Rates x _____	=	N/A
		Code	Book*	\$ 1.00		=	\$ _____
			Set	\$ 3.00		=	\$ _____
	State Capitol Complex	Acts		\$.20	Multiple of Base Rates x _____	=	\$ _____
		Code	Book*	\$.10			
			Set	\$.30			
	Special (Eight Judicial Districts)	Acts		\$.20	Multiple of Base Rates x _____	=	\$ _____
		Code	Book	\$.10			
			Set	\$.30			

*Index Volume assessed at base rate for Code books.

TOTAL AMOUNT OF LIQUIDATED DAMAGES DUE

PER BOOK OR PER SET TOTAL	x	ALL BOOKS OR SETS DELIVERED LATE	=	\$ _____
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B. Liquidated Damages for the Late Delivery of Response or Production Item. The Agency may impose liquidated damages against the Contractor for any of the following:



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1. **Late Delivery of Response or Production Item (Other Than Set of Assembled Pages).** The Contractor's late delivery of a response or production item other than a set of assembled pages due to the Agency's loss of time required to review and approve the production item.
 - a. **Calculation.** The liquidated damages shall be assessed for each business day that a response is delivered late or each calendar day that a production item other than a set of assembled pages is delivered late according to the formula used to calculate liquidated damages assessed at the base rate for the late delivery of books which are part of Normal Delivery for General Distribution as provided in Paragraph "A," Subparagraph 2, Subdivision "b" (the per response total or per item total). The per response total or per item total is the product of the base amount (the amount assessed for one response or production item delivered late multiplied by all books which are part of an order for that publication or part of that publication (i.e., statutory volumes sets and index volumes), without adjustment, as provided in Part IX, Paragraph "C," multiplied by an assumed equivalent percentile of a one-calendar-day delay in the delivery of those books to all destinations, as provided in Paragraph "A," Subparagraph 2), multiplied by the actual number of either business or calendar days that the Contractor delivers the response or production item late. The total amount of liquidated damage due is the per response total or per item total multiplied by the total number of responses or production items delivered late.
 - b. **Application.** The Agency's imposition of liquidated damages applies regardless of whether a production item or book is or is not actually delivered late because it is assumed that any delay in the Contractor's delivery of the response or production item will be rectified by the Agency taking extraordinary measures to restore the schedule for production during the trial performance period as provided in Part VI or during the standard performance periods as provided in Parts VII and Part VIII, if possible.
 - c. **Assessment Rate.** The assessment rate is based on the same assumption described in Paragraph "A," Subparagraph 2, Subdivision "b."



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Table C.1
Liquidated Damages for the Late Delivery of Responses

Type	Calculation Formula							
	Publication		Base Amount			No. of Days Response Delivered Late	Per Item or Per Response Total	
			Assessment Base Rate x One Response	Order	Equivalent No. of Days That All Books Delivered Late			
Not Digital Proofs	Acts		\$.10	x _____	x .25	x _____	=	\$ _____
	Code	Book	\$.05	x _____				
		Set	\$.15					
Digital Proofs	Acts		\$.10	x _____	x .50	x _____	=	\$ _____
	Code	Book	\$.05	x _____				
		Set	\$.15					

TOTAL AMOUNT OF LIQUIDATED DAMAGES

PER RESPONSE TOTAL	x	NUMBER OF RESPONSES DELIVERED LATE	=	\$ _____
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Table C.2
Liquidated Damages for the Late Delivery of Production Items (Items)
Other than a Set of Assembled Pages

Type	Calculation Formula							
	Publication		Base Amount			No. of Days Item Delivered Late	Per Item Total	
			Assessment Base Rate x One Item	All Publications Order	Equivalent No. of Days That All Books Delivered Late			
Cover	Acts		\$.10	x _____	x .25	x _____	=	\$ _____
	Code	Book	\$.05	x _____				
		Set	\$.15					
Set of Digital Proofs	Acts		\$.10	x _____	x .50	x _____	=	\$ _____
	Code	Book	\$.05	x _____				
		Set	\$.15					

TOTAL AMOUNT OF LIQUIDATED DAMAGES

PER ITEM TOTAL	x	NUMBER OF PRODUCTION ITEMS DELIVERED LATE	=	\$ _____
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2. Liquidated Damages for the Late Delivery of a Set of Assembled Pages. The Contractor's late delivery of a set of assembled pages due to the Agency's loss of the use of the set of assembled pages which will reduce the efficiency and effectiveness of the Agency in performing critical legislative functions.

a. Calculation. The liquidated damages shall be assessed for each business day that a set of assembled pages is delivered late according to the formula used to calculate liquidated damages assessed at the base rate multiplied by a factor of 10 for the late delivery of books during Normal Delivery for General Distribution as provided in Paragraph "A," Subparagraph 2, Subdivision "b" (per item total). The per item total is the product of the base amount (the amount assessed for one set of assembled pages delivered late) multiplied by the actual number of calendar days that the Contractor delivers the set of assembled pages late. The total amount of liquidated damage due is the per item total multiplied by all sets of assembled pages delivered late.

b. Assessment Rate. The assessment rate is based on the same assumption described in Paragraph "A," Subparagraph 2, Subdivision "b."

Table D
Liquidated Damages for the Late Delivery of Production Items (Items)
Sets of Assembled Pages

Type	Publication		Calculation Formula Per Production Item (Item)		
			Assessment Base Rate x 10 x One Item = Base Amount	Number of Days Item Delivered Late	Per Item Total
Set of Assembled Pages	Acts		\$10.00	x _____	= \$ _____
	Code	Book	\$5.00		
		Set	\$15.00		

TOTAL AMOUNT OF LIQUIDATED DAMAGES DUE

PER ITEM TOTAL	X	NUMBER OF PRODUCTION ITEMS DELIVERED LATE	=	\$ _____
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REQUEST FOR PROPOSALS (FORMS C-2) CONTRACT FORMS 2008 IOWA ACTS & 2009 CODE

C. Improper Packaging or Shipping of Books. The Agency may impose liquidated damages against the Contractor for the improper packaging (including loading) of books or the improper shipping (including unloading) of books to the Agency, as part of Normal Delivery or Special Delivery as required in Part VIII, Paragraph "B" and specified in Appendix C, and Appendix D, if the Agency concludes that the timeliness of delivery is more important than requiring specific performance alone as provided in Part XII.

1. **Assumption.** The Agency may impose liquidated damages due to a multiple-day delay in the delivery of books resulting from the estimated time expended by the Agency in notifying the Contractor, and the minimum estimated time required by the Contractor to package and ship the books to the Agency.
2. **Calculation.** The liquidated damages shall be assessed for an assumed number of calendar days that a book when properly packaged (including loaded) and properly shipped (including unloaded) would be required to be delivered to the Agency, according to the formula used to calculate liquidated damages assessed at the base rate for the late delivery of books during Normal Delivery for General Distribution, a multiple of the base rate for the late delivery of books during Normal Delivery for Legislative Distribution or State Capitol Complex Distribution, or a multiple of the base rate for special delivery as provided in Paragraph "A," Subparagraph 2, Subdivision "b" (per book total). The per book total is the product of the base amount (the amount assessed for one book improperly packaged, loaded, and shipped) multiplied by the number of days that the properly packaged, loaded, and shipped book would have been delivered late, if the Agency had demanded specific performance alone as provided in Part XII. The total amount of liquidated damages due is the per book total multiplied by all books improperly packaged, loaded, and shipped, subject to a cap for statutory volumes sets.
3. **Assessment Rate.** The assessment rate is based on the same assumption described in Paragraph "A," Subparagraph 2, Subdivision "b."



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Table E
Liquidated Damages for the Improper Packaging or Shipping of Books
Capped for Statutory Volumes Sets (Sets)

Type		Calculation Formula					
Delivery	(Distribution)	Publication		Assessment Rate x One Book or Set = Base Amount	Assumed No. of Days Properly Packaged or Shipped Book or Set Delivered Late	Per Book or Per Set Total	
Normal (Des Moines)	General	Acts		\$.10	x 3	=	\$ _____
		Code	Book	\$.05			
			Set	\$.15			
	Legislative	Acts		N/A	x 3	=	\$ _____
		Code	Book*	\$ 1.00			
			Set	\$ 3.00			
	State Capitol Complex	Acts			x 3	=	\$ _____
		Code	Book	\$ 1.00			
			Set	\$ 3.00			
	Special (Eight Judicial Districts)	Acts		\$.20	x 3	=	\$ _____
		Code	Book	\$.10			
			Set	\$.30			

*Index Volume assessed at base rate for Code books.

TOTAL AMOUNT OF LIQUIDATED DAMAGES DUE

PER BOOK OR SET TOTAL	X	NUMBER OF BOOKS OR SETS IMPROPERLY SHIPPED	=	\$ _____
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D. Liquidated Damages for Unsatisfactory Production Materials or Workmanship. The Agency may disapprove a production item or reject a book due to the use of production materials or workmanship that does not satisfy the standards provided in Part IV, as specified in Appendices A and B, but decline to unilaterally terminate the contract as provided in Part XI, Paragraph "C," if the Agency concludes that the timeliness of delivery is more important than requiring specific performance alone as provided in Part XII.



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1. a. **Production Item Other than Set of Assembled Pages.** The Agency's imposition of liquidated damages against the Contractor for a production item other than a set of assembled pages is calculated as follows:
 - (1) **Assumption.** The Agency is entitled to receive damages for losses that it would have incurred by demanding specific performance alone which would have caused the late delivery of the corrected replacement production item as provided in Part XII, Paragraph "C," and an assumed equivalent percentile of a one-calendar-day delay in the delivery of all books to all destinations, as provided in Paragraph "A," Subparagraph 1.
 - (2) **Calculation.** The liquidated damages shall be assessed according to the same formula used to calculate liquidated damages for the late delivery of a production item as provided in Paragraph "B," Subparagraph 1. However, the base amount is produced by multiplying the amount assessed for the delivery of an unsatisfactory production item and the number of days that a corrected replacement production item would have been delivered late to the Agency if the Agency had demanded specific performance alone as provided in Part XII. Then the base amount is multiplied by the assumed number of days that a replacement production item would have been delivered late if the Agency demanded specific performance alone as provided in Part XII.
 - (3) **Assessment Rate.** The assessment rate is based on the same assumption described in Paragraph "A," Subparagraph 2, Subdivision "b."



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Table F
Liquidated Damages for Unsatisfactory Production Items (Items)
Other Than Sets of Assembled Pages

Type		Calculation Formula										
		Publication		Base Amount			Assumed No. of Days Replacement Item Delivered Late		Per Item Total			
				Assessment Base Rate x One Item	All Books or Sets	Equivalent No. of Days All Books or Sets Delivered Late						
Cover	Trial	Acts		\$.10	x	_____	x	.25	x	2	=	\$ _____
		Code	Book	\$.05	x	_____						
			Set	\$.15								
	Standard	Acts		\$.10	x	_____	x	.50	x	4	=	\$ _____
		Code	Book	\$.05	x	_____						
			Set	\$.15								
Set of Digital Proofs	Trial	Acts		\$.10	x	_____	x	.25	x	2	=	\$ _____
		Code	Book	\$.05	x	_____						
			Set	\$.15								
	Standard	Acts		\$.10	x	_____	x	.50	x	4	=	\$ _____
		Code	Book	\$.05	x	_____						
			Set	\$.15								

TOTAL AMOUNT OF LIQUIDATED DAMAGES

PER ITEM TOTAL	x	NUMBER OF UNSATISFACTORY PRODUCTION ITEMS	=	\$ _____
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REQUEST FOR PROPOSALS (FORMS C-2)
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b. **Set of Assembled Pages.** The Agency shall not assess liquidated damages for a set of assembled pages that does satisfy the standards for production materials or workmanship provided in Part IV, as specified in Appendices A and B.

2. **Books.** The assessment of liquidated damages for books is calculated as follows:

- a. **Assumption.** It is assumed that if the Agency rejects a book, the Agency is entitled to receive damages for losses that it would have incurred by demanding specific performance alone, causing the late delivery of a corrected replacement book as provided in Part XII, Paragraph "C," and calculated as an assumed equivalent multiple calendar-day delay in the delivery of the book to its designated destination, as provided in Paragraph "A," Subparagraph 1.
- b. **Calculation.** The amount of liquidated damages shall be based on the same formula used to calculate liquidated damages for the late delivery of a book as provided in Paragraph "A," Subparagraph 2. However, in lieu of multiplying the base amount by the actual number of days that a book is delivered late to its designated designation, the base amount is multiplied by the assumed number of days that a corrected replacement book would have been delivered late to its designated destination, if the Agency had demanded specific performance alone as provided in Part XII.
- c. **Assessment Rate.** The assessment rate is based on the same assumption described in Paragraph "A," Subparagraph 2, Subdivision "b."



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Table G
Liquidated Damages for Unsatisfactory Books
Capped for Statutory Volumes Sets

Type		Calculation Formula					
Delivery	(Distribution)	Publication		Assessment Rate x One Book or Set = Base Amount	Assumed No. of Days Properly Packaged or Shipped Book or Set Delivered Late	Per Book or Per Set Total	
Normal (Des Moines)	General	Acts		\$.10	x 20	=	\$ _____
		Code	Book	\$.05			
			Set	\$.15			
	Legislative	Acts		N/A	x 20	=	\$ _____
		Code	Book*	\$1.00			
			Set	\$3.00			
	State Capitol Complex	Acts		\$.20	x 20	=	\$ _____
		Code	Book	\$.10			
			Set	\$.30			
	Special (Eight Judicial Districts)	Acts		\$.20	x 20	=	\$ _____
		Code	Book	\$.10			
			Set	\$.30			

*Index Volume assessed at base rate for Code books.

TOTAL AMOUNT OF LIQUIDATED DAMAGES DUE

PER BOOK OR SET TOTAL	x	NUMBER OF UNSATISFACTORY BOOKS OR SETS	=	\$ _____
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XIV. WAIVERS AND AMENDMENTS

- A. Writing Requirement.** A waiver or amendment of a provision of this contract shall not be valid unless made in writing.
- B. Waiver Restriction.** No person representing the Agency may waive a requirement or amend this contract, except the Director or Acting Director of the Legislative Services Agency; Mr. Richard Johnson, Legal Services Division Director; or Ms. Leslie Hickey, Iowa Code Editor.



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- C. Failure to Act Is Not a Waiver.** The failure of a party at any time to enforce a provision of this contract is not a waiver of the provision, and does not affect the validity of any provision of this contract or the right of either party to subsequently enforce a provision of this contract. A decision by the Agency to ignore a breach of this contract by the Contractor is not a waiver of a subsequent breach of this contract by the Contractor.

XV. EXECUTION AND EFFECT OF EXECUTION

- A. Integration.** Except as provided in this Paragraph "A", this contract contains the entire agreement between the Agency and the Contractor, and representations made before the signing of this contract shall not be binding, and neither party shall rely upon conflicting prior representations in entering into this contract. However, if the parties disagree regarding an issue which is not expressly addressed in this contract, or regarding the interpretation of a provision in this contract, which is expressly addressed in a provision contained in the Contractor's Proposal Form for the Acts or the Code as selected by the Agency, the provision contained in the proposal form shall be deemed as part of this contract. Otherwise, this contract supersedes the provisions of any Request for Proposals or agreements made prior to the execution of this contract.
- B. Effective and Termination Dates.** This contract takes effect upon being signed by authorized representatives of the Agency and the Contractor and continues until the provisions of this contract are satisfactorily performed, or until this contract is otherwise terminated under its provisions.
- C. Signatures.** The duly recognized representatives of the Agency and the Contractor have on the date noted signed their names to and executed this contract:

Richard Johnson, Legal Services
Division Director
Legislative Services Agency

9/15/08
Date

Ellen Gillespie
Director, Governmental Contracts
West Publishing Corporation (Thomson West)

9/18/08
Date

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Code/2008/C-2 Contract West
2008.doc

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Des Moines, Iowa 50319
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